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Subject: Serial No. 09/840,441
Our Docket 12,222
UNOFFICIAL PROPOSED CLAIMS 1 & 30

Comments:

Please see attached proposed amendment base claims 1 and 30, for telephone discussion.

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Ser. No. 09/840,441 Bioplate, Inc. Dkt. 12,222

Claim 1 (currently amended). A clip to interconnect primary and secondary bone zones having edges and surfaces, comprising in combination:

- a) a first tab to extend proximate a surface of the secondary bone zone,
- b) a second tab associated with the first tab, and located to extend proximate a surface of the primary bone zone,
- c) said second tab having ~~at least one barb~~ a multiplicity of barbs oriented to engage the primary bone to resist displacement of the second tab in a longitudinal direction toward the secondary bone zone[[.]],
- d) and a third tab extending generally parallel to the second tab, and integral with said first tab,
- e) said third tab having a multiplicity of barbs oriented to engage the primary bone zone to resist displacement of the third tab in said direction toward the secondary bone zone,
- f) said multiplicity of barbs extending in two parallel generally longitudinal rows, at edges of each of the second and third tabs.

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Claim 30 (currently amended). A clip to interconnect primary and secondary bone zones forming a gap therebetween, comprising

a) first and second interfitting clip components, the first component having generally Z-shaped configuration, and the second component having generally Z-shaped configuration,

b) said components having certain elements to engage surfaces defined by said first and second bone zones, and an additional element to engage an edge defined by the second bone zone[[.]],

c) and wherein certain elements of the first component include a tab to engage a surface of the secondary bone zone and barbs to engage a surface of the primary bone zone,

d) and wherein one of the Z-shaped components extends through and at opposite sides of an opening defined by the other Z-shaped component whereby the interfitting Z-shaped components define a hinge interfit at said opening and substantially at the level of said tab, but spaced from said barbs.

Claim 1

See c), d), e) and f) combining subject matter of claim 1, c) multiplicity of barbs; claim 11 (third tab); claim 12 (third tab generally parallel to second tab, and integral with first tab); claim 13 (third tab having multiplicity of barbs extending in longitudinal direction; and the multiplicity of barbs extending in two parallel generally longitudinal rows, and also at edge of each of the second and third tabs.

Argument

- 1) Maruyama's clip device 21, 22 or 40 lacks three tabs as defined above (a), b) and c) of claim 1).
- 2) Maruyama's clip lacks multiple barbs extending longitudinally in two rows (at f) of claim 1.
- 3) Maruyama's clip lacks barbs at edges of each of second and third tabs - he has no second and third tabs, as per 1) above.
- 4) Neither Maruyama or Lerch suggest the configurations of tabs and barbs, as recited in d), e) and f) of claim 1 and no motivation is shown from these references to provide a third tab, with barbs as in e) and f) of claim 1, attached.
- 5) Maruyama's device is not configured with tabs and barbs to grip bones as shown in applicant's Fig. 4, so there is no motivation to modify Maruyama's device massively to configure it as in applicant's Fig. 4.

Claim 30

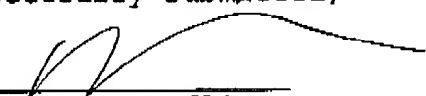
See c) and d) added to claim 30 to recite not only the hinge interfit of claim 31, but also one of the components extending through an opening defined by the other component, and the tab and barbs of claim 32, the barbs spaced from the hinge interfit. All of this is recited in a dual Z-shaped component configuration (see a) of claim 30).

Argument

- 1) Maruyama lacks suggestion of two Z-shaped components one extending through an opening defined by the other. His device is of one-piece construction only. To break his device into two components would weaken it, and not be obvious.
- 2) Maruyama lacks suggestion of a two-piece device as in 1) above, where barbs and a tab are provided, spaced from a hinged interfit at the locus of the opening as defined.
- 3) There is no motivation to use Lerch's barbs in Maruyama in spaced relation to a hinge interfit opening, since no such hinge and opening structure is provided in either reference.
- 4) No reference provides for two-piece hinging interfit of two Z-shaped components, with barbs.
- 5) The other cited art is even less pertinent than Maruyama and/or Lerch.

In view of the above, the base claims 1 and 30 and all dependent claims are believed and urged to be allowable.

Respectfully submitted,



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